

HOUSE BILL NO. 653
INTRODUCED BY D. MCALPIN

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING SMOKING IN A MOTOR VEHICLE WHEN A CHILD UNDER 18 YEARS OF AGE IS PRESENT; IMPOSING A PENALTY FOR VIOLATION OF THE MOTOR VEHICLE SMOKING PROHIBITION; AND ESTABLISHING PROBABLE CAUSE AS THE STANDARD FOR ENFORCEMENT OF THIS PROVISION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Smoking in motor vehicle prohibited -- definition. (1) It is unlawful for the operator or any passenger in a motor vehicle to ignite or smoke a cigarette, a pipe, a cigar, or other combustible matter when a child who is under 18 years of age is also present in the vehicle, regardless of whether windows of the motor vehicle are down or whether the vehicle is parked or on private property.

(2) For purposes of this section, the term "smoke" means inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, pipe, weed, plant, or other combustible substance in any manner or in any form.

NEW SECTION. Section 2. Penalties. (1) A driver who violates [section 1] shall be fined \$50, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of [section 1] may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203. Bond for this offense is \$50 and a jail sentence may not be imposed.

(2) A violation of [section 1] may not be recorded or charged against the driver's record.

(3) An insurance company may not hold a violation of [section 1] against the insured or increase the insured's premiums due to a violation of [section 1].

NEW SECTION. Section 3. Probable cause. Probable cause for a violation of [section 1] must be based solely upon a law enforcement officer's clear and unobstructed view of a person smoking as prohibited by [section 1]. Violation of [section 1] is considered a primary offense, and any law enforcement officer may stop a vehicle solely because of a violation of [section 1]. However, a law enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of [section 1].

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 12, and the provisions of Title 61, chapter 12, apply to [sections 1 through 3].

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